KPMG Meijburg & Co Tax & Legal

Policy statement on Box 3 restoration of rights

On June 30, 2022 the Deputy Minister of Finance, Mr. Van Rij, published the Policy Statement on the restoration of rights in Box 3 (hereinafter: the policy statement). The policy statement sets out how rights will be restored in Box 3 and how the new Box 3 income will be calculated according to the flat rate savings option. The Lower House of Parliament had been informed about the restoration of rights according to the flat rate savings option shortly after the Supreme Court rendered its Christmas judgment (on December 24, 2021). In this memorandum we take a closer look at the policy statement.

Target group
In short, the policy statement applies to all taxpayers who benefited from savings and investment (hereinafter: Box 3 income) in the years 2017 through 2022 – or in one or more of those years – for whom the tax assessment is not yet irrevocable, was not yet irrevocable on December 24, 2021 or has not yet been imposed.

Calculating the new Box 3 income
According to the policy statement, the new Box 3 income will be calculated in four steps and for each calendar year separately.

Step 1 – splitting the assets and debts into three asset categories
In step 1 the taxpayer's assets and debts will be split into three categories. The composition of the assets on January 1 of the relevant year (the 'reference date') will be the basis for this. The three assets categories are:

1. Bank balances
2. All other assets
3. Debts

Re category 1: 'bank balances' is defined as: bank and savings accounts (bank deposits) in the Netherlands and abroad.
Re category 2: 'all other assets' is defined as: investments, endowment policies, cash, funds lent out and other receivables, entitlements to periodic payments, and other assets.

Step 2 – calculating the return (per asset category)
In step 2 the return per asset category will firstly be calculated. The return in a particular asset category will be calculated on the basis of flat rates of return, which will differ per year and per asset category. The flat rates of return per asset category are:

	Asset category 1	Asset category 2	Asset category 3
2017	0.25%	5.39%	3.43%
2018	0.12%	5.38%	3.20%
2019	0.08%	5.59%	3.00%
2020	0.04%	5.28%	2.74%
2021	0.01%	5.69%	2.46%
2022	pending	pending	pending

Once the return in each asset category has been calculated, the joint return will be determined. This is done by multiplying the assets in asset category 1 and asset category 2 by the applicable flat rate of return and adding these results together. That total must then be *reduced* by the result of: multiplying the debts in asset category 3 by the applicable flat rate of return.

Step 3 – calculating the rates of return
In step 3 the rate of return is calculated. This is done by dividing the joint return calculated in step 2 by: the sum of the assets in asset categories 1 and 2 less the debts in asset category 3.

Step 4 – calculating the new Box 3 income
The final 'new Box 3 income' is calculated in step 4. This is done by multiplying the rate of return calculated in step 3 by: the sum of the assets in asset categories 1 and 2 less the debts in asset category 3 and less the tax-free amount.

If the newly calculated Box 3 income is less than the 'old Box 3 income' (i.e. the Box 3 income according to current legislation and which the Supreme Court found to be contrary to the European Convention of Human Rights (ECHR)), then the Box 3 income will be set at the newly calculated Box 3 income. If the newly calculated Box 3 income is higher than the old Box 3 income, nothing will change.

Reduction of tax assessments already imposed or imposition of pending tax assessments

Tax assessments already imposed
If a personal income tax assessment has already been imposed for a calendar year and if the newly calculated Box 3 income is less than the old Box 3 income, the tax inspector will reduce the tax assessment taking into account the difference between the new and the old Box 3 income.

Tax assessments still pending
If a personal income tax assessment still has to be imposed for a calendar year and if the newly calculated Box 3 income is less than the old Box 3 income, then the new Box 3 income will be included in the personal income tax assessment when it is imposed.

Legal protection
Taxpayers who do not agree with the restoration of rights offered or with the decision to not offer any restoration of rights may take action against this. The action they will have to take depends on their legal status. Taxpayers:

a) who took part in the class action appeal; or
b) who did *not* take part in the class action appeal but for whom the final tax assessment was not yet irrevocable on December 24, 2021; or
c) on whom the final tax assessment was imposed after December 24, 2021 but before July 1, 2022,

will have to request an ex officio reduction. Requests for an ex officio reduction that are (partially) rejected may be appealed by submitting a notice of objection with the tax inspector and filing an appeal with the courts (also see our MTN dated May 20, 2022).

Taxpayers for whom the final tax assessment had not yet been imposed on July 1, 2022 or for whom the deadline for submitting a notice of objection has not yet expired, may submit a notice of objection with the tax inspector within six weeks of the date of the final tax assessment, or request an ex officio reduction.

The Deputy Minister has promised to send a letter to the Lower House of Parliament before the summer recess, in which he will address the options for compensating taxpayers for whom the final tax assessments for the years 2017-2020 were already irrevocable on December 24, 2021.

KPMG Meijburg & Co comments

We had previously noted that implementing the Christmas judgment will be very burdensome for the Dutch Tax and Customs Administration. The letter to the Lower House accompanying the policy statement and the implementation test appended to the policy statement now also show this to be the case. The Dutch Tax and Customs Administration believes it will need nearly 495 FTEs to implement the restoration of rights in Box 3.

A number of things caught our attention when reading through the policy statement and the calculations for the first time. Firstly, the term 'bank balances' has been narrowly defined. Although this will not have much effect in practice, a narrow definition does, for example, mean that cash will fall in the asset category "all other assets" and thus will be deemed to yield a return of ± 5.5%. Funds lent out and other receivables will also fall under the asset category "all other assets" and therefore will also be deemed to yield a return of ± 5.5%. A flat rate of return of ± 5.5% on such assets could be higher than the actual return. We also noticed that the tax-free amount has been taken into account for the purposes of calculating the restoration of rights.

For taxpayers with a tax partner, allocating the joint Box 3 tax base in a different way to how it was initially allocated may have a more favorable effect (see Example 3 in the policy statement). This also applies to additional expenditure for specific health care costs and deductible donations. However, the Dutch Tax and Customs Administration will not automatically apply the more favorable allocation. For taxpayers with a tax partner, it is therefore advisable to carefully check the calculation of the Box 3 restoration of rights and to consider whether it may be better to allocate the Box 3 tax base differently between the tax partners.

Please do not hesitate to contact us if you have any questions about the above. Meijburg's advisors would be pleased to use their expertise to help you.

KPMG Meijburg & Co
July 1, 2022

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